

DISPATCH

CLASSIFICATION

S-E-C-R-E-T

DISPATCH SYMBOL AND NO.

EGOA-5759

VIA VIP POUCH

TO Chief, EE  
1850 Chief of Base, Berlin; Chief of Base, Bonn;  
General Counsel

HEADQUARTERS FILE NO.

32E-124-0020/3

FROM Chief of Station, Germany

DATE  
20 July 1959

SUBJECT Operational/CADORY/DYLINEN  
DYLINEN Criminal Charges

RE: "C-3" - (CHECK "X" ONE)

MARKED FOR INDEXING

ACTION REQUIRED

Bonn: see paragraph 6 below.

REFERENCE(S)

EGOA-4676, dated 7 May 1959

Document No. [ ]  
No Change in Class. [ ]  
☐ Declassified  
Class. Changed to: TS S C  
Next Review Date: 14/10/10  
Auth: HR 70-3  
Date: 14 OCT 1980

1. On 8 July 1959 [ ] met with Identity-1 in [ ] office in order to discuss the attachment to reference and the next steps leading toward the application of Law No. 7 in subject matter. The purpose of the meeting was to determine whether any other action besides the application of Law No. 7 could accomplish the quashing of the criminal charges against DYLINEN.

2. It was quickly determined by Identity-1 who had studied the attachment to reference in the meantime that only the application of Law No. 7 could achieve the desired result. We therefore considered immediately the tactics required to invoke Law No. 7 and at the same time keep undesirable reactions to such a move at the present time or in the immediate future to an absolute minimum. Our discussion turned around two points:

a. disposition of the charges after application of Law No. 7

b. text of the letter notifying the proper German office of the application of Law No. 7.

3. In regards to point 2.a. above, Identity-1 was initially reluctant to dispose of the charges administratively. He agreed wholeheartedly that German jurisdiction must be denied, but felt that such denial should be followed by judicial determination, to wit: by an American Court. After some back and forth, Identity-1 recognized [ ] argument that convocation of and trial by an American Court would in effect amount to a trial of the sovereign. Identity-1 therefore agreed to "kill" the charges administratively, a procedure which has considerable precedent in cases where German jurisdiction was denied during the period of the occupation of West Germany.

4. Having settled this point, we entered into a discussion as to the manner in which the German authorities are to be notified of the denial of jurisdiction. Identity-1 was in favor of the shortest possible notification which would simply state that in accordance with the provisions of Law No. 7 German jurisdiction is denied. It took a bit of explaining of the reason for the somewhat peculiar and decidedly non-legal phraseology of the draft letter which is Attachment "A" to the attachment of reference. [ ] stated our awareness of the fact that the use of Law No. 7 itself is an admission of American responsibility for actions which are subject to the provisions of the German criminal code, but that to the degree it can be done, we wanted to "fuzz up" this fact. In other words, the draft letter was written for the public at large and its effect on the latter does not purport to be "good law". A discussion of the letter itself followed which concluded in Identity-1's suggestion that the sequence of paragraphs be changed so that we do not end the letter on a negative note: i.e., the denial of jurisdiction. Identity-1 made some other minor suggestions and we agreed that [ ] would redraft the letter, forward it to Bonn and [ ] would discuss the new draft with Identity-1 and Identity-2. In parting, the KUBARK representatives stressed again that we desired a decision in principle that Law No. 7 must be used in the national interest, but that the timing of the action was a matter for the Ambassador's decision, since he would have to face whatever unfriendly reaction may result from this action.

William TYLER,  
Counselor of Embassy  
Chief of the Political Division

FORM 10-57 53b  
(40)

USE PREVIOUS EDITION.  
REPLACES FORMS  
5132, 51-23A AND 51-20  
WHICH ARE OBSOLETE.

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☒ CONTINUED

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DECLASSIFIED AND RELEASED BY  
CENTRAL INTELLIGENCE AGENCY  
SOURCE METHOD EXEMPTION 3028  
NAZI WAR CRIMES DISCLOSURE ACT  
DATE 2007

CONTINUATION OF  
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5. Identity-1 was most pleasant during the whole meeting and cooperative in every respect. Needless to say, he is as little enthused over the facts in the case and the need for action on the part of the Ambassador as we are. However, it was quite noticeable during the whole meeting that he does not seem to have a solid position regarding this case either as regards its legal or political aspects. On both points we did not have any difficulty to sway him toward our views. We are not convinced, however, that Identity-1 is deeply enough convinced of the correctness of our approach and proposed solution or that he fully understands the fine point of using Law No. 7 and yet frame any public statement--or what may eventually become a public statement--in such a manner that a clear admission of Allied direction or involvement in the activities on which the criminal charges are based, is avoided. Even as we parted he again stated that Allied security and prestige are clearly involved in this case and therefore the application of Law No. 7 is amply justified. While this indeed is the case, a direct admission is not in our interest.

6. Bonn: Attached hereto is a redraft of the letter to the Berlin authorities. We believe that it incorporates the suggestions made by Identity-1. In accordance with the understanding reached during the meeting of 8 July 1959 it is requested that [C] discuss the draft with Identities 1 and 2. We have no objection to any changes in this draft which may be suggested, as long as they do not involve a direct admission of Allied responsibility for or direction of the activities of DILINEN. This particular issue must remain as "fuzzy" as possible. We also repeat that we leave the timing for the delivery of the letter which denies jurisdiction to German authorities in this case to the judgment of the Ambassador. We wish to stress, however, that according to our information the Ambassador intends to leave Germany early this Fall. Needless to say, we would much prefer if the invocation of Law No. 7 would occur during his tenure in order to avoid the otherwise required reclearing of the proposed action. Your early report as to the reaction of Identities 1 and 2 and the suggested timing for the action will be appreciated.

CONCUR: [C] [JW.]

APPROVED: [C] [JW.]

Attachments: A. draft letter  
B. identities

Distribution:

- 3 w/att A h/w & B u/s/c - EE
- 2 w/att A h/w & B u/s/c - Bonn
- 2 w/att A h/w & B u/s/c - BOB
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